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Barnes, Charles F.

Oyster tonage tax on
commerce illegal

[S.I.]

[1866?]

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Oyster Tonage Tax on Commerce Illegal.

TO CHAS. F. BARNES, ESQ.

SIR: The legal status of the parties to a paper purporting to be a receipt under protest of payor of \$303, made by Captain Samuel Freeman, of Portland, State of Maine, master of the schooner *H. Prescott*, of said City and State, which sum of \$303, one John W. Ames, alleged inspector of oysters for Nansemond county, State of Virginia, claimed of the said Freeman as a tax, under the statute of said State of Virginia, on the 16th April, 1866, is such that, as matter of law, the said Freeman is entitled to recovery back of said sum of \$303, principal and interest, in an action of assumpsit in a declaration for money had and received.

The record shows said sum to have been demanded and received under color of legal right by the statutes of Virginia, "*as a tax levied on the *H. Prescott*, according to her tonnage, or in ratio of the same, as a measure of the amount to be collected of said vessel, she being about 101 tons register measurement; which tax is made the condition of license to said schooner to carry oysters from the waters of the State of Virginia.*"

Said sum would, therefore, seem to be a *tax on tonnage* at the rate of \$3 per ton, as matter of detail, for leave of transportation; and in the gross it has the *force and effect of an export duty on the cargo of oysters as a condition of a right to export the same, or of the use of the waters of said State, in making said export.* It would, therefore, seem to combine the features both of a *tonnage tax and export duty in the same exaction.*

Art. 1, sec. 10, par. 2, Cons. U. S., (Brightly's Digest,) enacts: "That no State shall, without the consent of Con-

gress, lay any impost or duties on imports or exports, except what may be absolutely necessary to execute its inspection laws; and that, in such case, the net proceeds thereof shall be for the use of the Treasury of the United States. The consent of Congress is a condition precedent, and the United States resources, the recipient of the beneficial interest of all State duties on imports or exports by the law of the land; and without such consent no State shall lay any tonnage duty."

The imposition of a tonnage tax is illegal, as an unconditional and independent State act; and if a legalizing condition exists, such tax must go to the use of the Treasury of the United States, and not to the use of any State, county, or city, or of the inspector of such State, county, or city of any export therefrom.

By art. 1, sec. 9, par. 5, of U. S. Constitution, (Brightly's Digest,) it is further declared "no tax on duty shall be laid on articles of export from any State." Oysters, it seems to me, are as much articles of export as corn or wheat.

It is therefore obvious, that the law of the land prohibits the raising of money by State authority alone, in the nature of a tax or duty on oysters exported therefrom, nor can any money, as a tax or duty on tonnage, be exacted, or legally claimed, under color of license to export, or otherwise, the products of any State, for the benefit of the Treasury thereof, nor at all without the consent of Congress. Therefore all moneys so exacted, if paid under protest, are moneys taken against the will of the payor, and when, against the express provisions of the Constitution of the United States, which is the law of the land, such moneys are wrongfully taken, and the State laws or municipal regulations, by force of which said moneys are exacted, are void; and whoever makes the exaction, does it in his own wrong, and becomes liable.

But the action must be brought against the individual who receives the money, whether he represents State or

county authority, or both, and not against the State; (Amend. U. S. Cons., art. 11,) it being now a well-settled principle of law, as well as the policy of the Government of the United States, that its authority bears directly on individuals, and takes cognizance of their acts as individuals, rather than of their acts, as representing the several States or their municipalities, and are held to answer as individuals, rather than as representatives of States or counties, no individual being allowed to maintain an action against a State under authority of the United States.

Truly, your obedient servant,

R. K. SEWALL.

NANSEMOND COUNTY, }
State of Virginia. }

I, Jno. W. Ames, an Inspector of Oysters for the County and State aforesaid, do hereby certify that Capt. S. Freeman, of the Schooner H. Prescott, of Portland, Maine, 101.48-100 tons burthen, has this day paid to me (under protest) the sum of three hundred and three dollars, the amount of tax assessed on said vessel, and the same is hereby licensed to carry oysters from the waters of the State, according to the laws thereof, for one year from the date hereof.

Given under my hand this 16th day of April, 1866.

[STAMP.]

(Signed)

JNO. W. AMES,

Inspector.

Acts of General Assembly of the State of Virginia, 1865-66, chapter 5, entitled "An act imposing a tax on oysters. * * * :

7. Every captain or officer of a vessel which shall be employed in carrying oysters taken in the waters of Virginia, shall obtain from an inspector a license, for which he shall

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pay to said inspector a tax of three dollars per ton for every ton said vessel may measure, according to the custom-house enrollment or license ; and it shall be the duty of every such captain or officer to have said license framed, and so set or placed upon the quarter-deck or binnacle of his vessel as to be exposed to the full view of every person who may board said vessel ; which license shall authorize such vessel to carry away oysters for one year. Every captain or other officer of a vessel, who shall load or carry away oysters in his vessel without such license, shall pay a fine of not less than five hundred nor more than two thousand dollars for each offence.

12. To enable the inspector to carry into effect the provisions of this act, he may attach the vessel and appurtenances of any captain or officer failing or refusing to obtain the license and pay the tax herein provided for ; and in the execution of such attachment, the said inspector may summon the powers of the county, and is hereby invested with all the power and duties of a sheriff for the collection of other taxes.

Published by C. F. BARNES.

END OF
TITLE